THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0723, Ronald Stafford & a. v. Lucille A. Shea, Trustee, the court on October 19, 2006, issued the following order:

The defendant, Lucille A. Shea, Trustee, appeals an order of the trial court finding that a fence that she erected was a nuisance and ordering her to reduce its scope. We reverse.

A private nuisance exists when an activity substantially and unreasonably interferes with the use and enjoyment of another's property. Cook v. Sullivan, 149 N.H. 774, 780 (2003). To constitute a nuisance, the defendant's activities must cause harm that exceeds the customary interferences with land that a land user suffers in an organized society, and be an appreciable and tangible interference with a property interest. Id. In determining whether an act interfering with the use and enjoyment is so unreasonable and substantial as to amount to a nuisance and warrant an injunction, a court must balance the gravity of the harm to the plaintiff against the utility of the defendant's conduct, both to himself and to the community. Id. at 780-81. Essential to a finding of a private nuisance is a determination that the interference complained of is substantial and that it is unreasonable. Robie v. Lillis, 112 N.H. 492, 495-96 (1972).

In this case, the trial court specifically found that the contested fence did "little to impede the view of the lake by plaintiffs except in a newly created seating area." The court also declined to grant requested findings that the fence constituted a "significant obstruction," that it "seriously obstruct[ed]" plaintiffs' view or that it caused a "very substantial reduction in view of the lake." (Emphasis added.) Based upon the record before us, we conclude that the plaintiffs failed to establish by a preponderance of the evidence the existence of a nuisance. See Cook v. Sullivan, 149 N.H. at 781. Accordingly, we reverse.

Reversed.

BRODERICK, C.J., and DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk